

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 1045 of 2014

Kailas s/o. Madhukarappa Kurhe,
Age : 48 years,
Occupation : Business,
R/o. Purna, Taluka : Purna,
District : Parbhani.

.. Petitioner
(Original complainant)

versus

1. The State of Maharashtra.
2. Raju Madhukarappa Kurhe,
Age : 34 years,
Occupation : Business,
R/o. Purna, Taluka : Purna,
District : Parbhani.
3. Chandrashekar s/o. Madhukarappa
Kurhe, Age : 33 years,
Occupation : Business,
R/o. as above.
4. Sudhakar s/o. Madhukarappa Kurhe,
Age : 44 years,
Occupation : Business,
R/o. as above.
5. Jyoti w/o. Jivanappa Tarodge,
Age : 45 years,
Occupation : Business,
R/o. Mali Galli, Parbhani,
Taluka & District : Parbhani.
6. Devidas s/o. Ranba Khandare,
Age : 59 years,
Occupation : Talathi,
R/o. Swantantrya Sainik Colony,
Purna, Taluka : Purna,
District : Parbhani.

.. Respondents
(Original respondents).

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*Mr. P.B. Malode, Advocate, holding for
Mr. G.N. Chincholkar, Advocate, for the petitioner.*

*Mr. U.S. Mote, Additional Public Prosecutor, for
respondent no.1 - State.*

*Mr. A.P. Sonpethkar, Advocate, for respondent
nos.2 to 5.*

Mr. P.V. Balkhande, Advocate, for respondent no.6.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 5TH MAY 2015

ORAL JUDGMENT :

1. Heard respective Counsel for the parties.
2. Rule. Rule made returnable forthwith. By consent, heard finally.
3. The petitioner herein happens to be the original complainant in Regular Criminal Case No. 40/2004. The accused were acquitted of the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code. The accused were acquitted by the Court of Judicial Magistrate (F.C.), Court No.1, Purna [District : Parbhani], vide judgment and order dated 9th January 2013.

4. The complainant, being aggrieved by the said judgment and order, had preferred a Criminal Appeal before the Sessions Court at Parbhani. The complainant i.e. present petitioner had filed an application seeking condonation of delay in filing the said appeal. The appeal was beyond limitation by 64 days.

5. The learned Extra Joint Ad hoc Additional Sessions Judge, Parbhani, vide judgment and order dated 26th April 2014, in Criminal Application No. 29/2013, has been pleased to reject the application seeking condonation of delay. The learned appellate Court has observed that ignorance of law is no excuse for condoning the delay in filing an appeal. Moreover, the learned appellate Court has taken into consideration, that the applicant was also acquitted in one of the complaints filed by respondent no.2 and vide judgment and order dated 9th January 2013, the complainant as well as the accused were acquitted in two connected matters. The learned appellate Court has gone into the merits of the case on the whole, instead of considering the application seeking condonation of delay.

6. The learned Counsel for the petitioner vehemently submits that the petitioner herein had filed the said appeal under Section 372 of the Code of Criminal Procedure, 1973, which reads thus :—

“ No appeal to lie unless otherwise provided.
— No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. "

7. The learned Counsel for the petitioner rightly submits that the Code of Criminal Procedure does not contemplate any specific period of limitation within which an appeal ought to be filed under Section 372 of Cr.P.C. and, therefore, in fact, there was no question of filing an application seeking condonation of delay. However, the Counsel appearing for the original complainant had lost sight of the provisions under Section 372 of Cr.P.C. and has failed to apprise the Sessions Court of the provisions under Section 372 of Cr.P.C. and, therefore, the appellate Court has rejected the application seeking condonation of delay, which has resulted in grave miscarriage of justice. Taking into consideration the provisions of the statute and the submissions advanced across the Bar, the impugned order dated 26th April 2014, deserves to be quashed and set aside.

8. In the result, the petition is allowed.

(A) The judgment and order dated 26th April 2014, passed by the Extra Joint Ad hoc Additional Sessions Judge, Parbhani, in Criminal Application No. 29/2013, is quashed and set aside, and the matter is remanded to the Sessions Court at Parbhani.

(B) The petitioner is at liberty to file an application under Section 372 of the Code of Criminal Procedure, 1973, before the Sessions Court at Parbhani. The learned Sessions Court shall consider the application, if filed, on its own merits. In view of the fact, that there is no specific bar of limitation for considering an application under Section 372 of Cr.P.C., the petitioner need not file an application seeking condonation of delay.

(C) The appellate Court shall consider the appeal of the present petitioner, under Section 372 of Cr.P.C., in the eventuality, a fresh appeal is filed within a period of four weeks from today.

9. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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